

Chang (Migration) [2019] AATA 2725 (13 June 2019)

DECISION RECORD

DIVISION: Migration & Refugee Division

REVIEW APPLICANT: Mrs Qing Chang

VISA APPLICANTS: Mr Xiumin Yang
Master Yishan Yang

CASE NUMBER: 1713372

DIBP REFERENCE(S): 2015048416

MEMBER: Helena Claringbold

DATE: 13 June 2019

PLACE OF DECISION: Sydney

DECISION: The Tribunal affirms the decisions not to grant the visa applicants Partner (Provisional) (Class UF) visas.

Statement made on 13 June 2019 at 9:36am

CATCHWORDS

MIGRATION – Partner (Provisional) (Class UF) visa – Subclass 309 (Partner (Provisional)) – genuine spousal relationship – credibility issues – inconsistent evidence – joint investment properties – bank account balances – past living arrangements – work schedule – documents in a language other than English – translation procedures – anonymous allegations – detailed and specific in nature – preparation of statements – claimed issues with interpreting during Tribunal hearing – decision under review affirmed

1.

LEGISLATION

Migration Act 1958 (Cth), ss 5F, 65

Migration Regulations 1994 (Cth), r 1.15A; Schedule 2, cls 309.211, 309.221, 309.321

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

2. On 3 November 2015, Mr Xiumin Yang, the first named visa applicant (the visa applicant) applied for a Partner (Provisional) (Class UF) visa. The application was based on his spousal relationship with Mrs Qing Chang, the sponsor. Master Yishan Yang, who is Mr Yang's son, is the second named visa applicant.
3. On 12 June 2017, a delegate of the Minister for Immigration and Border Protection refused to grant the visas. The delegate was not satisfied that the visa applicant and the sponsor are genuine spousal partners. Therefore, the visa applicant did not meet cl.309.211(2) of Schedule 2 to the Migration Regulations 1994 (the Regulations) made under the *Migration Act 1958* (the Act). As a result the secondary visa applicant did not meet cl.309.321 to the Regulations. This is a review of the delegate's decision.
4. On 11 September 2018, the sponsor appeared before the Tribunal to give evidence and present arguments. She previously provided the Tribunal with a copy of the delegate's decision record. At the beginning of the Tribunal hearing the applicant's migration agent submitted to the Tribunal copious documents. As the Tribunal had not been provided the documents prior to the Tribunal hearing and had not had time to consider the information, the Tribunal hearing was adjourned. On 14 September 2018, the applicant was invited to a Tribunal hearing on 20 November 2018. On 13 November 2018, the applicant's migration agent informed the Tribunal that the applicant would be unable to appear before the Tribunal on 20 November 2018. On 14 November 2018, the Tribunal invited the applicant to a Tribunal hearing on 1 April 2019. On 1 April 2019, the applicant appeared before the Tribunal to give evidence and present arguments. The Tribunal also received oral evidence from the visa applicant. The sponsor was represented in relation to the review by her registered migration agent, Ms Alice Yang, who is the visa applicant's sister and the sponsor's sister-in-law.
5. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed. The parties provided inconsistent evidence to the Tribunal and the parties have not satisfied the Tribunal that they are credible.

CONSIDERATION OF CLAIMS AND EVIDENCE

6. The Tribunal has taken into consideration, individually and as a whole, all the evidence in the Department of Immigration and Border Protection's (the Department's) case file and the Tribunal's case file and the evidence at the Tribunal hearings.

7. ISSUE

8. The issue in the present case is whether the visa applicant is the spouse of the sponsor as defined in s.5F of the *Migration Act 1958* (the Act).

9. BACKGROUND ON THE EVIDENCE

10. The visa applicant was born in 1974 in Lingxian, Shandong, China. His father is deceased. His mother and two siblings live in China. He has one sibling living in Australia. On 16 August 1998, he married Ms Shenping Deng. On 12 July 2010, Ms Deng and the visa applicant divorced. There is one son from this relationship. He was born in 1999, is the secondary visa applicant and he lives in China. On 15 July 2010, the visa applicant entered Australia as the holder of a student visa. As detailed in the delegate's decision record, he overstayed his visa and departed Australia on 16 October 2015.

11. The sponsor was born in 1967 in Anhui, China. Her parents and one sibling live in China. On 10 October 1991, she married Mr Runghui Liu. On 11 September 2015, Mr Liu and the sponsor divorced. There is one son from this relationship. He was born in 1999 and lives in Australia. In 2005, she entered Australia as the holder of a student visa. On 19 June 2015, she was granted a contributory parent visa. On 1 November 2015, the sponsor departed Australia.
12. In June 2012, the parties met in Pennant Hills, NSW. In September 2015, the parties married in Vaucluse, NSW.

Is the visa applicant the spouse of an eligible citizen?

13. The Tribunal is satisfied that the sponsor, at the time of visa application and at the time of this decision, was an Australian permanent resident.

Are the parties validly married?

14. At the time the visa application was made, the visa applicant provided evidence of his marriage to the sponsor. On the evidence, the parties were married to each other under a marriage that is valid for the purposes of the Act as required by s.5F(2)(a).

Are the parties in a spousal relationship?

15. 'Spouse' is defined in s.5F of the Act and provides that a person is the spouse of another where the two persons are in a married relationship. Persons in a married relationship must be married to each other under a marriage that is valid for the purposes of the Act, there must be a mutual commitment to a shared life as a married couple to the exclusion of all others, the relationship must be genuine and continuing, and the couple must live together, or not live separately and apart on a permanent basis: s.5F(2)(a)-(d).

16. CLAIMS AND FINDINGS

Are the other requirements for a spousal relationship met?

17. In forming an opinion about these matters, regard must be had to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the visa applicant's and review applicant's household and their commitment to each other as set out in r.1.15A(3), which is extracted in the attachment to this decision.
18. Regarding the parties' financial matters, there is no evidence that the parties' have any joint ownership of assets or joint liabilities other than their joint bank account and there is no information that the parties have any other legal obligations owed to the other party. The sponsor, in a statement to the Tribunal, stated that she had a property in her name in Liverpool. She claimed that the property was initially in the visa applicant's name. However due to a change in bank policy, the visa applicant could not obtain a mortgage loan and the visa applicant transferred the property to the sponsor's name. She stated that investments of RMB700,000.00, RMB800,000.00 and RMB230,000.00, are in the visa applicant's name but the money was transferred from the sponsor's bank account. She stated that the parties had savings of more than RMB1 million and that she signed bank accounts on behalf of the visa applicant. A copy of a translated bank statement for the visa applicant recorded RMB1 million with a notation Qing Chang for Xiumin Yang. Copies of translated documents for bank accounts in the visa applicant's name in June 2018, recorded a balance over of RMB987,000.00 and in February 2018, balances of RMB800,000.00 and RMB700,000.00. The documents have a notation 'client has confirmed risk of investment and accepted it' 'Qing Chang for Xiumin Yang'. Another bank document records that on 4 August 2018 the sponsor transferred RMB1 million to the visa applicant's bank account.

19. The parties claim that since returning to China in November 2015, they have shared their expenses. In an undated joint statement the parties provided to the Tribunal, they stated that they pay all bills for the unit they live in, with payments being made from the visa applicant's account ending 9200 and the sponsor's account ending 6621. The sponsor stated that the information provided to the Tribunal shows the sharing of household bills. The Tribunal has been provided translated copies of individual bank statements for the visa applicant and the sponsor. These record that their salaries are deposited into their personal bank accounts. Ad hoc utility payments are recorded against one of the sponsor's bank accounts. However these do not record any information about where the services were provided. A copy of a cheque and a receipt dated October 2015, for \$20,000, is made payable to the sponsor. It is claimed that the money was transferred for the sponsor's living expenses. Numerous translated documents have been provided with the heading 'order account details'. They appear to be receipts for various purchases. Some record the payer with account ending 2316 (the visa applicant's account) and others record the payer against account ending 9736, while others have no account registered. Most of the receipts record a postal address of Jixi Road, Sanlian Jiedao (the sponsor's parents' home) while others recorded the parties claimed address or have no address recorded. Ad hoc notations on some of the receipts include 'consuming food'; 'train ticket', 'Electricity Tixiu my home' and 'Gas Tixiu my home' are without further identification. Account ending 9736 cannot be identified by the Tribunal and copies of other receipted payments do not show any account information. Collectively, these receipts provide little insight into the parties' financial matters or how the parties manage their day-to-day household expenses because, other than the notations it is difficult to determine who actually paid for the items. The sponsor told the Tribunal that the parties opened a joint bank account in 2016/2017 and in the beginning she deposited into this bank account. However withdrawals were difficult because the parties were required to attend the bank. She said that the account was not used in 2018 and 2019. In the sponsor's statement of April 2019, the following is claimed: the visa applicant normally pays the bills because he has more time at home. The parties don't have any special arrangement about paying bills and normally whoever sees the bill will pay it. As the bills are family expenses both the sponsor and the visa applicants pay the bills. She provided an email dated March 2015, from the Foreign Investment Review Board, stating that there were no objections to the visa applicant purchasing a property in Liverpool. A contract of sale with the visa applicant's name entered into it in handwriting is unsigned by the purchaser. Another document named 'Transfer' recorded a 'Torrens Title' transfer is from an investment company to the sponsor.
20. The Tribunal put information to the sponsor under s.359AA of the Act, as follows:
- The visa applicant told the Tribunal the following: that the parties have a joint property in Liverpool, New South Wales. He financed the purchase of the property, however, because of his status in Australia the property is recorded in the sponsor's name. The amount still owing on the property is either \$350,000 or \$360,000. The mortgage repayments are \$1,000 monthly. The rental income from the property is either \$400 or \$500 weekly. He was unsure of strata fees and unsure how it operated as it was managed by his sister. This information was put to the sponsor as it was inconsistent with her evidence that the amount owing on the property is \$220,000. The mortgage repayments are \$700 to \$800 monthly. The rental income from the property is \$225 weekly.
21. The sponsor responded in a statement of April 2019 stating the following: the sponsor deposited \$100,000 in to an offset account for the property and considered that the mortgage to be reduced by this amount and this is why the parties provided inconsistent information about the balance owing. The property is managed by an agent and the agent's contact is with the sponsor's sister-in-law. The parties leave it to the sponsor's sister-in-law and niece to look after the property and this is why the parties didn't know the details about the property. The rent is \$420 and was previously \$465.

22. The Tribunal finds it unusual that the parties do not understand the details about their claimed investment property. They were unable to provide consistent information about the amount owed on the property or about the rental income. The Tribunal does not think it reasonable, even if the property is agent managed and the agent's contact is the visa applicant's sister that they would be unaware of the finances for their claimed property.
23. The Tribunal put information to the sponsor under s.359AA of the Act, as follows:
- The visa applicant told the Tribunal the following: that the sponsor owns a three storey building including the basement, in Min Yuan Village. It is 150 square metres. It was rented for around RMB1,400 or RMB1,600 monthly. Another property owned by the sponsor is inhabited by a friend of the sponsor's brother. This information was put to the sponsor as it was inconsistent with her evidence that the building was previously rented for RMB4,800 monthly. The other property she owns is currently empty and prior to 2017 her brother lived there. The sponsor's migration agent and the sponsor in a post hearing submission stated that the interpretation of three storey building is incorrect and it should have been interpreted as being on level 3.
24. The sponsor responded in her statement of April 2019 and stated the following: the sponsor made a mistake the rent of RMB4,800 is per quarter. The rent was transferred to the sponsor's account. The applicant provided four pages of what appears to be a transaction list, which she claimed to be records of rental payments. The pages are in a language other than English. The sponsor claimed that she did not have time to have these pages translated. She also stated that she forgot that her brother's friend is temporarily living at the other property.
25. The Tribunal cannot read the information provided. It can read entries recorded as 4,800 against dates of 13 October 2015, 17 December 2015, 25 March 2016 and 23 June 2016 and 3,200 on 21 September 2016. It cannot determine what these figures represent and does not accept this information as an explanation for the inconsistent information provided by the parties. The Tribunal is surprised that the sponsor would be unable to remember that a friend of her brother lived in her other property.
26. The Tribunal put information to the sponsor under s.359AA of the Act, as follows:
- The visa applicant told the Tribunal the following: that the sponsor has a bank account with the Bank of Queensland with \$80,000 or \$100,000 in it and has two to three other bank accounts with \$2,000 or \$3,000 in them. She has a bank account with the China Construction Bank with a few 'tens of RMB' in it. She has another account with the Guangda Bank with RMB50,000 in it. He is unsure if she has any other bank accounts. He has a bank account with the China Construction Bank with RMB700,000 to RMB800,000 in it. He has accounts with the Min Sheng Bank, the Guangda Bank and the Bank of Commerce with RMB2,000 in each of them and a Rural Bank account with a nil balance. This information was put to the sponsor as it was inconsistent with her evidence that: her Bank of Queensland bank account has a nil balance. She has an offset account with \$100,000 in it and a St George Bank account with less than \$10,000 in it. In addition, she has two bank accounts in China, one with the China Construction Bank with RMB50,000 in it and another with the Guangda Bank with either RMB10,000 or RMB5,000 in it. The visa applicant has a bank account with the Construction Bank with RMB800,000 or RMB900,000 in it. He also has a Min Sheng Bank account where his salary is deposited and a Guangda Bank account with a nil balance.
27. The sponsor responded in her statement of April 2019 and stated the following: the visa applicant knew that the sponsor transferred \$100,000 from the Bank of Queensland account. In the China Construction Bank, the parties have about RMB800,000 of which RMB100,000 belongs to her mother for investment purposes and this is why the visa applicant said that

'we' have about 700,000 to 800,000. The Guangda Bank has 50,000 belonging to her mother. The sponsor treats 2,000 as no money in the bank. The visa applicant mentioned that the sponsor had a St George Bank account but this was not interpreted at the Tribunal hearing.

28. The Tribunal accepts that the sponsor withdrew approximately \$100,000 from the Bank of Queensland and deposited it into another of her bank accounts because it has been provided evidence of these transactions taking place. The Tribunal does not accept that the visa applicant knew about the withdrawal from the Bank of Queensland because he told the Tribunal that this account had \$80,000 or \$100,000 in it. It does not accept the sponsor's explanation about the inconsistent information the parties provided about the visa applicant's China Construction Bank account because the visa applicant clearly provided evidence of the balance in the account and did not give any evidence of a portion of it belonging to the sponsor's mother. The Tribunal is of the view that the sponsor is fabricating information to allay inconsistencies in the parties' evidence. It does not accept that the parties are credible. The Tribunal does not accept that the parties pool their financial resources. They provided inconsistent information about the Bank of Queensland bank account. The visa applicant had the understanding that it continued to have a substantial balance in it, when in fact approximately \$100,000 had been transferred out of it into one of the sponsor's bank accounts in October 2018 and the sponsor's evidence is that it had a nil balance. The sponsor provided a document claiming to be a 'transfer record' for the sponsor's mother. This is in a language other than English and cannot be fully read by the Tribunal. The Tribunal can read a date of 29 March 2019 and a figure of 50,000 on the record. It cannot read any of the other information provided on it.
29. The Tribunal accepts the following: that the sponsor has property in Liverpool which is rented. The visa applicant and the sponsor have multiple bank accounts in their individual names. They previously transferred money to a bank account and the sponsor previously signed Qing Chang for Xiumin Yang for some accounts. The parties have a joint bank account which has not been used either in 2018 or 2019. The Tribunal does not accept that the parties pool financial resources because, other than the sponsor signing some accounts on behalf of the visa applicant and the transfer records and the receipts, already commented on above, there is no independent evidence to support this claim. Even if the Tribunal accepted the sponsor's claim that the visa applicant stated she had a St George Bank account and this was not interpreted at the Tribunal hearing, the parties provided inconsistent information about their bank accounts and about their financial matters. The Tribunal does not accept that there is a basis of any sharing of day-to-day household expenses because the information they have provided does not support that this is the case.
30. Regarding the parties' household, there is no evidence that the parties have any joint responsibility for the care and support of children. The parties stated that in July 2015 they moved into the visa applicant's sister's home in Macquarie Park. They told the Tribunal that from November 2015, they lived in a unit owned by the sponsor's brother's mother-in-law at Huangshan Road, Baohe District, Hefei China. Previously they stated that they were always at the sponsor's parents' home in Jixi Road, Sanlian Street, Anhui. They stated that this is where their purchases were delivered. They have dinner with the sponsors' parents and on one occasion helped rescue 'an old couple from upstairs' [in their parents building]. They provided a copy of a news article about a fire and Ms Chang is described as assisting in the rescue. At one point the article mentions 'Ms Chang said that she and her husband rushed to the fourth floor'. The parties claim to share housework. The Tribunal does not accept that the parties live together because there is little independent information to support this. Although some of the translated documents record the Room 502 address for services, there is no information about the account holder for these services or who is actually paying the accounts. Nor, do the banking documents have any addresses on them for the accounts.

31.

32. The Tribunal put information to the sponsor under s.359AA of the Act, as follows:
- The visa applicant told the Tribunal that the parties had not lived at any other addresses other than the Macquarie Park and Huangshan Road addresses. This information was put to the sponsor as it was inconsistent with her evidence that from February 2016 to May 2016, the parties lived together for three months with her mother-in-law.
33. The sponsor responded in her statement of April 2019 and stated the following: the visa applicant forgot to mention that the parties lived with his mother for three months in Dezhou. The applicant's sister also went to Dezhou. The parties also went to Beijing in April for four to five days during that time. Photographs have been provided.
34. The Tribunal does not accept that the visa applicant would be unable to remember the parties living with his mother for three months. It considered the photographic evidence but other than the handwritten notes on the photographs there is no information recorded within the images themselves of where or when the photographs were taken.
35. The Tribunal put information to the sponsor under s.359AA of the Act, as follows:
- The visa applicant told the Tribunal that in Australia the sponsor and he worked together two to three times monthly. This information was put to the sponsor as it was inconsistent with her evidence that the parties only worked together for one day.
36. The sponsor responded in her statement of April 2019 and stated the following: the parties worked together when one of the employers was sick or on leave.
37. The Tribunal would expect the parties to be able to provide consistent information about the times they worked together in Australia.
38. The Tribunal put information to the sponsor under s.359AA of the Act, as follows:
- The visa applicant told the Tribunal that the sponsor works Monday to Friday from 8: am to 5: pm and sometimes returns home between 7: pm to 8: pm and works either Saturday or Sunday. This information was put to the sponsor as it was inconsistent with her evidence that she works Monday to Friday from 8:30 am and finished work between 6:pm and 7:pm. On Saturday she works from 9: am to 12: pm or 5: pm.
39. In a post hearing submission the sponsor's migration agent stated that the interpreter did not interpret that the sponsor stated that she worked either Saturday or Sunday. The sponsor responded in her statement of April 2019 and stated the following: the sponsor normally leaves home at 8: am and comes home about 7:00 pm or 8:00 pm. Their concept of work is when they leave home and they always consider going to work as work hours.
40. The Tribunal does not accept the sponsor's explanation for the inconsistent information. The Tribunal specifically asked the parties about the time they began work and not the time they left home for work. It is of the view that the parties should be able to provide agreed information about their routine. The Tribunal does not accept that the parties have lived together as they claimed or that they shared the responsibility for housework.
41. Regarding the socially aspects of the parties relationship, the parties claim to present themselves as being married to each other and to have travelled together. In an undated joint statement provided to the Tribunal, the applicant describes a celebration with the sponsor's family at a dinner and of travelling to meet his family. The parties provided copies of various chat records; airline tickets and ad hoc information about social activities. In a previous statement, the visa applicant described the parties' travel to Beijing and their plans to travel to Tibet and other destinations. In another statement, the sponsor talks of the

parties travelling to Thailand. The sponsor told the Tribunal that the parties like to go to the movies or shopping and dining with family and travelling. A third party statement is provided by the visa applicant's sister who is acting as the sponsor's and visa applicant's migration agent. She speaks of the parties previously being unhappily married and of them loving each other. She stated that the parties go out together and share housework. The Tribunal finds that the visa applicant's sister, in acting as the parties' migration agent and in providing evidence on the parties' behalf, has a conflict of interest and it places no weight on this statement. In another statement the author stated that he began to know the sponsor when the parties prepared for their wedding. He believes the parties' relationship to be genuine and that he witnessed the parties wedding. In other statements, the authors describe the parties as having the same cultural background and of them respecting each other and members of their families. They also believe the parties to be in a genuine relationship. Photographic evidence depicts the parties together and with others on their wedding day and together and with others at different locations. The Tribunal accepts that the parties' communicated with each other and have travelled and socialised together in Australia and China. It also accepts that the parties represent themselves and are seen as being in a partner relationship. The Tribunal considered the third party statements.

42. Regarding the parties commitment to their relationship, the parties met in 2012 and have been married for more than three years. The parties claim to have lived together in Australia since July 2015 and China since their marriage. The Tribunal does not accept that the parties have lived together as they claimed. The parties provided inconsistent information about aspects of their relationship including their financial resources and their living arrangements. In an undated joint statement provided to the Tribunal, the parties stated the following: after their marriage in Australia they decided to return to China. They did this to share their good news with family and friends and to let them share their happiness and joy and to receive their [family and friends'] blessing. The visa applicant described renovating the sponsor's parents' home and caring for the sponsor's mother after a spinal operation. They claim that in May 2017 the sponsor's father was diagnosed with dementia and spent time in hospital. The sponsor stated that after her father was released from hospital, the visa applicant and her brother took care of her father and she cooked for him and also cared for him after cataract operations. The Tribunal has been informed that the sponsor's father died on 26 December 2018. The sponsor told the Tribunal that the visa applicant attended her father's funeral and was welcomed and seen as her husband by her family. The parties told the Tribunal that they will establish a cleaning company in Australia.
43. The sponsor in her statement of April 2019 stated the following: the visa applicant supports her emotionally and physically and helped the sponsor care for her parents and she feels lucky to have him as her husband. There were over 100 attendees at the sponsor's father's funeral, which the visa applicant attended and held his name pad as son-in-law according to local custom and the parties provided a wreath with daughter and son-in-law written on it. The parties will live together regardless of what happens, however, they want to live with the visa applicant's son and the sponsor's son in Australia.

44. Other considerations

45. On 25 January 2018, the Tribunal invited the sponsor to provide information in support of the parties' relationship. At that time she was advised that if the information was in a language other than English, it must be accompanied by an English translation from an accredited translator.
46. On 23 July 2018, the Tribunal wrote to the applicant and informed her of the following: documents in languages other than English should be accompanied by an English translation. The English translation must be an official certified translation from a translator who is currently accredited by the National Accreditation Authority for Translators and Interpreters. Translations provided by non-accredited translators outside of Australia should

be endorsed by the translator with their full name, address, telephone number and details of their qualifications and experience in the language being translated.

47. On 3 August 2018, the Tribunal wrote to the applicant and attached documents that had been provided to the Department during the visa application process and to the Tribunal during the review process. She was informed that the documents had not been translated into English or had not been translated by a relevant person. The Tribunal advised the sponsor on the process for providing these documents as detailed above. The applicant was also told that third party statements were to be provided as statutory declarations and accompanied by identification documents of the authors.
48. The applicant provided the Tribunal with numerous documents in a language other than English. The Tribunal in coming to its decision considered all of the information it could read. The Tribunal is of the view that the parties have been provided ample time to provide their information and evidence to the Tribunal.
49. As detailed in the delegate's decision record, in December 2015, an allegation was received by the Department stating that the parties' relationship is contrived for migration purposes. The allegation stated that the applicant and the sponsor live together in China specifically for the application and have prepared well for the interview. The allegation is detailed and provides specific information about the visa applicant and the sponsor.
50. In an undated joint statement provided to the Tribunal the parties stated, that it is regretful that one of their friends or relatives does not like them and made allegations about the parties however as the allegations were anonymous they should not be relied upon. They add that they sought assistance from Xiuping Yang and Weigang Ren and they helped the parties.
51. The sponsor's migration agent in a post hearing submission stated the following: her position as the sponsor's sister-in-law leads her to a dilemma. She knows that the parties' relationship is genuine and she decided to help the parties lodge the partner visa application. In a statutory declaration dated April 2019, the migration agent stated the following: she is the visa applicant's sister. When the visa applicant came to Australia in 2010 he lived with her and her husband. During his stay he and the migration agent's husband did not get on. She goes on to provide details of her private life and stated that she suggested to her husband that he see a psychologist and believes that it was her husband who made the allegations to the Department. She stated that the parties married on 26 September 2015 in Vacluse. In a statement dated April 2019. In the sponsor's statement of April 2019, the same comments are made about the visa applicant's sister's husband. Additionally, it is stated that the migration agent's husband felt marginalised because the visa applicant lives with his family and he may have developed ill feeling against the visa applicant. The Tribunal has not been provided any independent information to substantiate that it was the applicant's migration agent's husband who made the allegations to the Department or information about his health. The allegations made to the Department were specific in nature and the Tribunal places some weight on them.
52. In a post hearing submission, the sponsor's migration agent provided a six page statement written in English. At the bottom of each page is the sponsor's signature. The Tribunal is aware that the sponsor was assisted at the Tribunal hearing by an interpreter in the English and Mandarin languages and displayed little understanding of the English language. No explanation has been provided about how this statement was prepared. The Tribunal is of the view that the six page statement has been written by another person and then signed by the sponsor. The Tribunal is of the view that it would be more appropriate for the authors to of statements to write them in their own words and language and then for those statements to be translated by an authorised person. The purpose of obtaining statements is to obtain individual, spontaneous and accurate statements. The Tribunal is concerned that in preparing obtaining statements in this manner may not record the authors information

accurately. In this decision record, this statement is referred to as 'in her statement of April 2019'.

53. The sponsor's migration agent and the sponsor in their post hearing submission claim that there were issues with the interpreting during the Tribunal hearing. The sponsor in her statement of April 2019 stated the following: that the inconsistent information is due to memory, interpretation issues and a long hearing. The Tribunal has not been provided any independent opinion to support the claims made about the interpreting. Usually, when claims are made about the interpreting service the Tribunal is provided with a transcribed record of the Tribunal hearing to support the claims. In this case a transcription of the Tribunal hearing has not been provided. However in this case the claimed errors in interpretation are not relevant to the Tribunal's findings.
54. The Tribunal considers it reasonable for a couple who claim to have lived together as spousal partners for approximately three years to be able to provide consistent information about their relationship and their current circumstances. Consistent information about these matters provides the Tribunal insight into the companionship and emotional support parties offer each other. Although the parties stated that they will live together regardless of what happens, but want to live with the visa applicant's son and the sponsor's son in Australia, the parties were unable to provide consistent information about their financial matters, or about their employment in Australia and China or about where they lived together. Collectively this led the Tribunal not to be satisfied that the parties are credible. It is not satisfied, on the evidence that the parties provide each other with companionship and emotional support or that they see their relationship as long term.
55. This decision record is a synopsis of the information before the Tribunal. In coming to its decision the Tribunal considered all the evidence individually and as a whole, including the Department and Tribunal files and the evidence pre-and post-hearing and at the Tribunal hearing. The Tribunal considered the third party statements and is of the view that these statements do not outweigh the Tribunal's concerns about the lack of information about other aspects of the parties' relationship. While the Tribunal accepts that there is some kind of relationship between the parties, the Tribunal is not satisfied that it is a spousal relationship. Given the inconsistent evidence and the Tribunal's concerns about the parties' credibility and notwithstanding the information provided, the Tribunal, is not prepared to accept the parties' evidence about their commitment to the relationship. The parties have not satisfied the Tribunal that they have a mutual commitment to a shared life to the exclusion of all others, that they have a genuine and continuing relationship, or that they live together and not separately and apart on a permanent basis. The visa applicant therefore does not meet the requirements of s.5F of the Act.
56. Therefore the visa applicant does not meet cl.309.221 of Schedule 2 to the Regulations.
57. The visa applicant has not satisfied the criteria for the grant of the visa. It follows that the secondary visa applicant does not meet the criteria for the grant of the visa and does not meet cl.309.311 to the Regulations.
58. For the reasons above, the visa applicant does not satisfy the criteria for the grant of the visa.

DECISION

59. The Tribunal affirms the decisions not to grant the visa applicants Partner (Provisional) (Class UF) visas.

Helena Claringbold
Member

ATTACHMENT - Extract from Migration Regulations 1994

1.15A Spouse

- (1) For subsection 5F (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F (2) (a), (b), (c) and (d) of the Act exist.
- (2) If the Minister is considering an application for:
 - (a) a Partner (Migrant) (Class BC) visa; or
 - (b) a Partner (Provisional) (Class UF) visa; or
 - (c) a Partner (Residence) (Class BS) visa; or
 - (d) a Partner (Temporary) (Class UK) visa;the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).
- (3) The matters for subregulation (2) are:
 - (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day-to-day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being married to each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long-term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).